

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/27/2010 has been entered.

### ***Status of Claims***

2. Claims 1-8 are pending in this action.
3. Claims 4 and 7 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected, respectively, a species and invention, there being no allowable generic or linking claims. Election was made without traverse in the reply filed on December 12, 2008.
4. New Claim 8 has been added. Claim 8 is withdrawn from consideration as being related to the method of claim 7, which is withdrawn based on the restriction requirement dated November 19, 2008.
5. Applicant has overcome the following rejection(s) by virtue of the amendment to the claims and/or persuasive remarks: (1) The 35 U.S.C. 103(a) rejection of claims 1-3

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and 5-6 over Blake et al. (U.S. 4,368,211) in view of Bradford et al. (U.S. 4,375,431) has been withdrawn.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**8. Claims 1-3 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koh et al. (U.S. 5,609,904) in view of Saito et al. (EP 1364585).**

9. Regarding claims 1 and 8, Koh et al. teaches a whipping cream composition and the use of soybean protein in such compositions. Koh et al. discloses, "The creams which contain proteins of egg or soybean origin other than milk protein, can be used

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freely without any trouble as far as they show neutrality, and in cases where they are intended to be used under acid conditions, attention must be paid to the weight ratio of casein protein/whey protein, whereby any protein may be used only if it possesses acid resistance; even proteins which have no acid resistance can also be used at ratios in the range of 0.24 to 3.8." (column 5, lines 44-52) The mixture has an aqueous phase and an oil phase (column 10, lines 13-17) and is homogenized (column 10, lines 23-24).

10. However, Koh et al. is silent regarding the treatment of the soybean protein for removing a polyanionic substance or addition of a polycationic substance.

11. Saito et al. teaches "a soybean protein which can be widely utilized in an acidic food of pH lower than 4.6 and is soluble in a range of pH 3.0 to 4.5, and whose solution has preferred transparency in appearance and excellent storage stability together with functional properties such as emulsifying and gel-forming capabilities"... subjected to, "(A) a treatment for eliminating or inactivating polyanionic substances which are derived from the protein source and contained in the solution, and (B) a treatment for adding a polycationic substance to the solution, as a treatment for increasing the positive surface charge of soybean protein in the system; and then subjecting the protein solution to a heat treatment at a temperature of above 100°C in an acidic region of pH below the isoelectric point of the protein." [0013]

12. When producing an acidic whipping cream which contains soybean protein as taught by Koh et al., one of ordinary skill in the art would be motivated to produce an acidic whipping cream with good solubility, stability and other functional properties.

Saito et al. teaches a soybean protein material which has excellent solubility, stability,

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and emulsifying properties, and one of ordinary skill in the art at the time the invention was made would find it obvious to use the soybean protein of Saito et al. in the manufacture of an acidic whipping cream as taught by Koh et al., in order to create a more stable product.

13. Regarding claim 2, Koh et al. teaches whipping cream compositions containing acidic taste substance, disclosing that compositions can be "formulated with a souring agent such as various fruits, fruit juices and yogurts, as may be reflected by the increasingly diversified taste." (column 1, lines 44-46)

14. Regarding claim 3, Koh et al. discloses that the cream is whipped cream.

15. Regarding claim 5 and 6, Koh et al. discloses a whipped cream with a pH of 3.8 (column 1, line 17).

### ***Response to Arguments***

16. Applicant's arguments, filed 08/27/2010, with respect to the rejection(s) under 35 U.S.C. 103(a) of claims 1-3 and 5-6 over Blake et al. (U.S. 4,368,211) in view of Bradford et al. (U.S. 4,375,431) have been fully considered and are persuasive.

17. Applicant argued "Blake only discloses the use of soybean protein hydrolyzate as whipping agents." Therefore, the rejection has been withdrawn.

18. However, upon further consideration, a new ground(s) of rejection is made over Koh. et al. in view of Saito et al.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JULIYA KRAVETS whose telephone number is (571)270-5681. The examiner can normally be reached on 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571)272--1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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